

## DEPARTMENT OF THE ARMY PERMIT

**Permittee:** WA State Dept of Transportation

600 Stewart Street, Suite 520  
Seattle, Washington, 98101

**Permit No:** NWS-2009-562

**Issuing Office:** Seattle District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** Complete the high-occupancy vehicle (HOV) lane system on State Route (SR) 520 between Evergreen Point RD and 108<sup>th</sup> Avenue NE; re-stripe the existing HOV lane from the outside lane to the inside lane between 108<sup>th</sup> Street NE and SR 202; construct inside transit stops at Evergreen Point RD and 92<sup>nd</sup> Avenue NE; modify the Bellevue Way NE, 84<sup>th</sup> Avenue NE, and 108<sup>th</sup> Avenue NE interchanges; and add a bicycle/pedestrian path from Lake Washington to 108<sup>th</sup> Avenue NE (in accordance with the plans and drawings dated April 30, 2010, attached hereto which are incorporated in and made a part of this permit). The purpose of the project is to improve safety, mobility, and travel times for the multiple modes of vehicles using SR 520 between Evergreen Point RD and SR 202.

**Project Location:** In Lake Washington, Unnamed Tributary to Fairweather Bay, Fairweather Creek, Cozy Cove Creek, Tributary to Cozy Cove Creek, West Tributary to Yarrow Bay Wetlands, East Tributary to Yarrow Bay Wetlands, West Tributary to Yarrow Creek, Tributary to West Tributary to Yarrow Creek, South Fork of Yarrow Creek, Yarrow Creek, ditches, and associated wetlands at the Cities of Medina, Clyde Hill, Kirkland, Bellevue, and Redmond and the Towns of Hunts Point and Yarrow Point, Washington.

### Permit Conditions:

#### *General Conditions:*

1. The time limit for completing the work authorized ends on MAR 14 2016. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 1 month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in accordance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification to this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the

conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

7. After a detailed and careful review of all the conditions contained in this permit, the permittee acknowledges that, although said conditions were required by the Corps, nonetheless the permittee agreed to those conditions voluntarily to facilitate issuance of the permit; the permittee will comply fully with all the terms of all the permit conditions.

*Special Conditions:*

a. You must provide a copy of the permit transmittal letter, the permit form, and drawings to all contractors performing any of the authorized work.

b. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the U.S. Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

c. You must implement and abide by the ESA requirements and/or agreements set forth in the Biological Assessment for Eastside Transit and HOV Project, dated June 2009 in its entirety. The U.S. Fish and Wildlife Service (USFWS) concurred with a finding of "may affect, not likely to adversely affect" based on this document on July 30, 2009 (USFWS Reference Number 13410-2008-I-0601). Both agencies will be informed of this permit issuance. Failure to comply with the commitments made in this document constitutes non-compliance with the ESA and your Corps permit. The USFWS is the appropriate authority to determine compliance with ESA.

d. This U.S. Army Corps of Engineers (Corps) permit does not authorize you to take a threatened or endangered species, in particular the Puget Sound Chinook salmon. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permits, or ESA Section 7 consultation Biological Opinion with non-discretionary "incidental take" provisions with which you must comply). The BO prepared by the National Marine Fisheries Service (NMFS) dated October 22, 2009, contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the specified "incidental take" in the BO (NMFS Reference Number 2009/03446). Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the BO. These terms and conditions are incorporated by reference in this permit. Failure to comply with the commitments made in this document constitutes non-compliance with the ESA and your Corps permit. The NMFS is the appropriate authority to determine compliance with ESA.

e. In order to protect the listed threatened and endangered species in the project area, the permittee may conduct the authorized activities in the work window as agreed to and documented in writing through consultation by the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service (Services) in any year this permit is valid. If changes to the originally authorized work window are proposed, the permittee must re-coordinate these changes with the Services and receive written concurrence on the changes. Copies of the concurrence(s) must be sent to the U.S. Army Corps of Engineers, Regulatory Branch, within 10 days of the date of the revised concurrence.

f. The permittee shall implement and abide by the wetland mitigation plan "Final Wetland Mitigation Report—Medina to SR 202: Eastside Transit and HOV Project" dated April 26, 2010. Mitigation monitoring shall be performed for years 1, 2, 3, 5, 7, and 10 and mitigation monitoring reports summarizing all monitoring results will be due in years 1, 3, 5, 7, and 10 from the due date of the as-built drawings of the mitigation site. All reports must be submitted to the Corps, Seattle District, Regulatory Branch and must prominently display the reference number NWS-2009-562. The mitigation monitoring report must be prepared as described in the enclosed *Mitigation Monitoring Report Format* dated October 10, 2008.

g. The permittee shall submit a final grading plan for the Yarrow Creek mitigation site and the Keller Mitigation Site to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch (Corps) for review and approval. Work shall not start at the wetland mitigation sites without written approval from the Corps.

h. The permittee shall implement and abide by the stream mitigation plan "Final Streams Mitigation Report—Medina to SR 202: Eastside Transit and HOV" dated April 26, 2010. Mitigation monitoring shall be performed for years 1, 2, 3, 5, 7, and 10 and mitigation monitoring reports summarizing all monitoring results will be due in years 1, 3, 5, 7, and 10 from the due date of the as-built drawings of the mitigation site. All reports must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch and must prominently display the reference number NWS-2009-562. The mitigation monitoring report must be prepared as described in the enclosed *Mitigation Monitoring Report Format* dated October 10, 2008.

i. A status report on the wetland and stream mitigation construction, including as-built drawings, must be submitted to the Corps, Seattle District, Regulatory Branch, no later than 13 months from the date of permit issuance. Annual status reports on mitigation construction are required until mitigation construction is complete.

j. The wetland area restored, rehabilitated, and enhanced as compensatory mitigation for work authorized by this permit, shall not be made the subject of a future individual or general Department of the Army permit application for fill or other development, except for the purposes of enhancing or restoring the mitigation associated with this project. In addition, a description of the mitigation area identified in the final mitigation plan as approved, and any subsequent permit mitigation area revisions, will be recorded with the Registrar of Deeds or other appropriate official charged with maintaining records on real property. Proof of recording must be provided to the Corps, Seattle District, Regulatory Branch no later than 60 days from the date of permit issuance.

k. Your responsibility to complete the required compensatory mitigation as set forth in Special Conditions "f" and "h" will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers.

l. Per the Department of Archaeology & Historic Preservation concurrence letter dated November 4, 2009, a professional archaeologist must be onsite to monitor for the presence of archaeological resources during ground disturbing activities greater than one foot deep in all proposed detention pond and stream enhancement sites. In addition, a professional archaeologist must be onsite to monitor for the presence of archaeological resources during all ground disturbing activities on the parcel adjacent to the Keller Mitigation Site.

#### Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

☒ Section 10 of the Rivers and Harbor Act of 1899 (33 U.S.C. 403).

☒ Section 404 of the Clean Water Act (33 U.S.C. 1344).



☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of the permit.
- b. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the

corrective measures by contract or otherwise and bill you for the cost.


6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

  
WA St Dept of Transportation

3/14/11  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

  
Anthony O. Wright  
Colonel, Corps of Engineers  
District Engineer

3/14/11  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFeree)

\_\_\_\_\_  
(DATE)



US Army Corps  
of Engineers ®  
Seattle District

## CERTIFICATE OF COMPLIANCE WITH DEPARTMENT OF THE ARMY PERMIT



Permit Number: NWS-2009-562

Name of Permittee: WA St Dept of Transportation

Date of Issuance: MAR 14 2011

Upon completion of the activity authorized by this permit, please check the applicable boxes below, date and sign this certification, and return it to the following address:

Department of the Army  
U.S. Army Corps of Engineers  
Seattle District, Regulatory Branch  
Post Office Box 3755  
Seattle, Washington 98124-3755

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of your authorization, your permit may be subject to suspension, modification, or revocation.

<input type="checkbox"/>	The work authorized by the above-referenced permit has been completed in accordance with the terms and conditions of this permit. Date work complete: _____
<input type="checkbox"/>	Photographs and as-built drawings of the authorized work (OPTIONAL, unless required as a Special Condition of the permit).
<input type="checkbox"/>	If applicable, the mitigation required (e.g., construction and plantings) in the above-referenced permit has been completed in accordance with the terms and conditions of this permit (not including future monitoring). Date work complete: _____
<input type="checkbox"/>	Photographs and as-built drawings of the mitigation (OPTIONAL, unless required as a Special Condition of the permit).

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_